

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES F. LOVE,	:	
	:	NO. 1:09-CV-00592
Petitioner,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
HAMILTON COUNTY COURT OF	:	
COMMON PLEAS,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Substituted Report and Recommendation (doc. 40) and Respondent's and Petitioner's objections thereto (docs. 46 & 47, respectively). In his Report and Recommendation, the Magistrate Judge recommends (i) that Petitioner be granted an unconditional writ of habeas corpus barring the State of Ohio from retrying him on Count One and (ii) that Petitioner's petition be denied in all other respects.

The facts and procedural history are well-detailed in the Magistrate Judge's Substituted Report and Recommendation and will not be reiterated here. In brief, with his habeas petition, Petitioner seeks to prevent his retrial in Hamilton County Common Pleas Court on four counts of rape of a child under thirteen by asserting one ground for relief: the retrial would violate his rights under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. The Magistrate Judge concluded

that the Double Jeopardy Clause bars retrial of Petitioner on Count One of the indictment, which relates to a rape charge from 1990. The Magistrate Judge further concluded, however, that the remaining counts in the indictment are not so barred.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon thorough consideration of the foregoing, the Court finds the parties' objections unpersuasive and determines that the Magistrate Judge's Substituted Report and Recommendation is thorough, well-reasoned and correct. The Court thus AFFIRMS and ADOPTS it in its entirety (doc. 40); DENIES the objections thereto; GRANTS Petitioner an unconditional writ of habeas corpus barring the State of Ohio from retrying Petitioner on Count One; and DENIES Petitioner's petition in all other respects.

Further, the Court ISSUES Petitioner a certificate of appealability. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000); 28 U.S.C. § 2253(c), Fed. R. App. P. 22(b). And, pursuant to 28 U.S.C. 1915(1)(c), this Court CERTIFIES that any appeal of this order would be taken in good faith and therefore GRANTS Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: April 17, 2012

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge